IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1486 of 2004
with
CIVIL APPLICATION NO.4927 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARSHOTTAMBHAI LAKHMANBHAI RAJYAGURU
Versus
CHANDRASINH ABHESINH RAJPUT

Appearance:
MR GAURANG H BHATT for the Appellant.
MR SK PATEL for Respondent No. 1-2
MR MAULIK J SHELAT for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 13/10/2004

ORAL JUDGEMENT

1. This appeal under Section 173 of the Motor Vehicles Act arises out of a judgment and award rendered by the Motor Accident Claims Tribunal (Aux.), Amreli, on 18th April, 2001, in Motor Accident Claim Petition No.283

of 1993. The appellant was the claimant before the Tribunal and the Tribunal dismissed the claim petition with costs and directed that the amount paid towards no fault liability is to be recovered from the claimant. Aggrieved by the said judgment and award, the original claimant has preferred this appeal.

2. The appellant-original claimant preferred the application for compensation of Rs.1 lakh on account of injuries that he had sustained in a vehicular accident that he met with on the 2nd June, 1993, around 5.30 in the evening, in Jesingpara area of Amreli Town. The vehicle involved in the accident was a motor car bearing registration No.GUD 5808, allegedly owned by respondent No.2, driven by respondent No.1 and insured with respondent No.3.

3. The respondents denied the claim of the appellant on all counts.

4. The Tribunal recorded the deposition of the appellant-claimant at Ex.24, where he says that, while he was riding motorcycle bearing registration No.GJ-14-5606, he was knocked down by one Ambassador Car bearing registration No.GUD 5808, which was driven by respondent No.1 in a rash and negligent manner. According to him, initially, he was taken to Orthopedic Surgeon, Dr. Vaghasiya, at Amreli and, on his advice, was taken to Dr. S.S. Bhutak, at Mahuva, Bhavnagar District, where he had to take treatment as an indoor patient for two months.

4.1 In cross-examination, he denied a suggestion that no such accident had ever occurred and that that his claim is false. He, however, admitted that he had not lodged an F.I.R. in respect of the above accident nor did he take any treatment at the Civil Hospital, Amreli. He says that he was admitted in the hospital of Dr. Vaghasiya, but no treatment was given and, then he was taken to Dr. Bhutak's Shanti Orthopedic Hospital, at Mahuva. He stated in his cross-examination that, he had lodged a private complaint before the Chief Judicial Magistrate, Amreli, a few days before his lodging the claim petition. He also admitted in the cross-examination that he had not pursued the complaint, thereafter, till his deposition, and he did not know what had happened in the said complaint.

5. Considering the above aspects, the Tribunal came to a conclusion that the applicant-appellant is not able to produce any reliable evidence regarding the accident or injuries sustained by him, involving the vehicle in

question. Except his verbal say, there is no material to support the claim. The Tribunal also considered the conduct of the applicant in not lodging the F.I.R., not going to Government Hospital and taking treatment, producing no evidence regarding the treatment at Dr. Vaghasiya's hospital, and travelling in the injured condition a distance of about 90 kms. to Dr. Bhutak's hospital, at Mahuva and came to a conclusion that the same is not genuine. The Tribunal also observed that Jesingpara area of Amreli Town is a thickly populated area and, around the time when the accident is alleged to have occurred, there would be a large number of people moving around and the claimant has not been able to bring any independent evidence to support his claim about the correctness of the accident. The Tribunal also noticed the unnatural conduct of the claimant in lodging the complaint just 20 days prior to the filing of the claim petition and then not pursing the same. The Tribunal observed that this was done only with a view to fill up the gap. The Tribunal, therefore, concluded Issue No.1 in the negative, holding that the claimant has not been able to prove that he had received injuries as a result of the rash and negligent driving of the vehicle in question and, ultimately, rejected the claim petition with costs.

6. Learned Advocate, Mr. Bhatt, vehemently contended that this is a benevolent jurisdiction that the Tribunal was exercising and the Tribunal ought not to have applied strict principles in evaluating the evidence or procedural lapses.

6.1 Mr. Bhatt is more aggrieved by the direction of the Tribunal for recovery of the amount of no fault liability paid to the claimant. Mr. Bhatt submitted that there is ample evidence to show that the applicant has taken medical treatment and, therefore, the appeal may be allowed.

7. On the other hand, the appeal is opposed to by learned Advocate, Mr. Shelat. According to him, the Tribunal has taken into consideration all relevant aspects and has given a reasonable and judicious verdict. According to Mr. Shelat, benevolent legislation or jurisdiction does not mean that the claimant is absolved from proving his case. Mr. Shelat further submitted here is a case of total dismissal of the application on the ground of non-acceptance of the claimant's case of his having sustained injury in the accident. As such, no tortious act is proved by the claimant which would hold the driver of the vehicle in question primarily liable to

pay the compensation nor would the owner of the vehicle be vicariously liable to pay the compensation and, as a consequence, the Insurance Company would not be liable to indemnify the injured. In such a situation, the amount paid under no fault liability has to be recovered from the claimant because it would result into unjust enrichment. The claimant taking treatment by itself would not entitle the claimant to money from the opponents and, therefore, the appeal may be dismissed in toto.

8. Having regard to rival side contentions, this Court has to examine two aspects, (1) whether the Tribunal committed an error in dismissing the claimant's claim for compensation and (2) whether the Tribunal committed an error in requiring recovery of the payment made under no fault liability clause.

9. This Court has given an anxious look at the evidence on record and it may be noted that the Tribunal has given a close scrutiny to the evidence and given due weightage to the value of oral and documentary evidence and the conduct of the claimant in dismissing the claim, and rightly so, in the opinion of this Court.

10. Undisputedly, Jesingpara area of Amreli is a thickly populated area, of which judicial notice would have been taken by the Tribunal and, if the accident occurs at about 5.30 to 6.00 in the evening, there would be many witnesses to the incident. Admittedly, the claimant has not taken any treatment in any Government Hospital. He claims to have approached Dr. Vaghasiya, an Orthopedic Surgeon of Amreli, on whose advice, he claims to have gone to Dr. Bhutak's Hospital, at Mahuva, about 90 kms. away. He says that he was not given any treatment by Dr. Vaghasiya. It would be relevant to note that, in a medicolegal case, ordinarily, a doctor is expected to intimate the police and, if that was so, either Dr. Vaghasiya or Dr. Bhutak would have informed the Police. No such material has come on record of the Tribunal and the Tribunal was, therefore, right in coming to the conclusion that the factum of accident and the applicant having sustained accidental injuries is not properly established. The conduct of the applicant, in lodging the complaint just 20 days prior to the lodging of the claim petition, wherein he has indicated names of witnesses to the incident but has not examined them before the Tribunal, is also properly noted by the Tribunal. The claimant does not know what has happened to the complaint lodged by him. All these factors

collectively led the Tribunal to a conclusion that the claimant has failed to establish this case and, in the opinion of this Court also, the Tribunal has come to a correct conclusion in dismissing the claim petition.

11. Now, comes the question about the amount of no fault liability paid by the Insurance Company to the claimant, as per the award passed by the Tribunal in the claim petition, under Section 140 of the Motor Vehicles Act. There is no dispute about the fact that the award was for Rs.12,000/- plus interest and costs. The Tribunal has ordered that the said amount may be recovered. In this regard, learned Advocate, Mr. Shelat, for the Insurance Company, vehemently, submitted that there is non-involvement of the vehicle held by the Tribunal and upheld by this Court in the foregoing paragraphs and, therefore, no interference may be made in the order of the Tribunal. However, looking to the provisions contained in Section 141(3) of the Motor Vehicles Act and the observation made by the Apex Court in the case of Oriental Insurance Company Ltd. v. Hansaraj V. Kodala, AIR 2001 SC 1832, in paragraph 15, to the effect that "from the aforesaid sections one aspect is abundantly clear that right to claim compensation on the basis of no fault liability under Section 140 is in addition to the right to claim compensation on the principle of fault liability or right to get compensation under any other law. Such amount is required to be reduced from the amount payable under the fault liability or compensation which can be received under any other law. If nothing is payable under the Act, then the claimant is not required to refund the amount received by him.", this Court is of the view that the contention cannot be accepted, particularly, considering the smallness of amount involved in the issue, namely, Rs.12,000/- with interest and costs paid by way of no fault liability, way back in 1997. Therefore, considering the smallness of the amount and the above observations of the Apex Court, in the opinion of this Court, the order of the Tribunal requiring recovery of the amount paid under no fault liability requires to be interfered with. Without making any specific observation on legal aspect, the appeal is, therefore, allowed in part. The verdict of the Tribunal on merits of the claim is confirmed. Only the order requiring recovery of the amount paid towards no fault liability from the claimant stands set aside. It is clarified that, in view of the undisputed fact that only amount of Rs.12,000/- with costs and interest was payable under the no fault liability, this Court makes no observation regarding any other amount that may have been

paid to the appellant in excess of the said amount. No Costs.

12. In view of the disposal of the appeal, Civil Application No.4927 of 2004 does not survive. It shall stand disposed of accordingly. Rule is discharged with no order as to costs. Ad-interim relief is vacated.

[A. L. DAVE, J.]
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